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## BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

## COMMISSIONERS

DOCKETED

JUL 30 2012

GARY PIERCE - Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
THE ARIZONA DEPARTMENT OF  
TRANSPORTATION TO UPGRADE AN  
EXISTING CROSSING OF THE UNION PACIFIC  
RAILROAD AT AGUA VERDE ROAD, NEAR  
VAIL, PIMA COUNTY, ARIZONA, USDOT NO.  
741-308-N.

DOCKET NO. RR-03639A-12-0087

DECISION NO. 73281OPINION AND ORDER

DATE OF HEARING:

June 7, 2012

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Mr. James Redpath, Assistant Attorney General,  
Transportation Section, on behalf of the Arizona  
Department of Transportation;

Mr. Reed Campbell, Beaugureau, Zukowski & Hancock,  
P.C., on behalf of the Union Pacific Railroad Company;  
and

Ms. Bridget Humphrey and Mr. Charles Hains, Staff  
Attorneys, Legal Division, on behalf of the Safety  
Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On March 7, 2012, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at Agua Verde Road near Vail, Pima County, Arizona at USDOT No. 741-308-N ("Application").

On March 26, 2012, by Procedural Order, a hearing was scheduled on June 7, 2012.

On May 22, 2012, the Staff Memorandum was filed recommending approval of the Application.

On June 4, 2012, ADOT filed certification that notice of the proceeding was provided in

1 accordance with the Commission's Procedural Order.

2 On June 7, 2012, a full public hearing was convened before a duly authorized Administrative  
3 Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the Railroad and the  
4 Commission's Safety Division Railroad Safety Section ("Staff") were present with counsel. At the  
5 conclusion of the hearing, the matter was taken under advisement pending submission of a  
6 Recommended Opinion and Order to the Commission.

7 \* \* \* \* \*

8 Having considered the entire record herein and being fully advised in the premises, the  
9 Commission finds, concludes, and orders that:

#### 10 **FINDINGS OF FACT**

11 1. On March 7, 2012, ADOT filed an Application in which it requested an Opinion and  
12 Order from the Commission approving an agreement between ADOT and the Railroad to upgrade an  
13 existing at-grade crossing at Agua Verde Road near Vail, Pima County, Arizona at USDOT NO. 741-  
14 308-N.

15 2. On January 25, 2006, representatives of Staff, ADOT, Pima County and the Railroad  
16 participated in a diagnostic review of the proposed improvements for the Agua Verde at-grade  
17 crossing. The parties who were present all agreed that the proposed improvements would improve  
18 safety at the crossing.

19 3. ADOT is seeking Commission approval to upgrade a passive crossing on a dirt  
20 roadway which at present only has cross bucks and stop signs to regulate the flow of vehicular traffic  
21 across the Railroad's tracks. ADOT is proposing to extend electrical power to the crossing and to  
22 install state-of-the-art LED flashing lights, automatic gates, bells and constant warning timed  
23 circuitry. A new concrete crossing surface will also be installed.<sup>1</sup>

24 4. On June 4, 2012, ADOT filed certification that it had provided public notice of the  
25 Application and hearing thereon pursuant to the Commission's Procedural Order by publishing notice

26 \_\_\_\_\_  
27 <sup>1</sup> The proposed upgrade of the Agua Verde Road crossing was approved by the Commission in Decision No. 68686 (May  
28 5, 2006) as part of the 2006 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section 130") which is  
provided by the Federal Highway Administration ("FHWA") to reimburse ADOT for 100 percent of the cost of the  
project. Section 130 projects are used to eliminate hazards to pedestrians and vehicles at public railroad crossings which  
are not primarily for the benefit of the Railroad.

1 in the *Arizona Daily Star* and by mailing, by certified U.S. mail, notice to the Railroad and Pima  
2 County.

3 5. The hearing was held as scheduled on June 7, 2012.

4 6. According to the Staff Report, Agua Verde Road is a two lane north-south dirt  
5 roadway used for two-way traffic with one lane going in each direction. The general area which  
6 surrounds Agua Verde Road is of a rural nature with a few houses and state land surrounding the  
7 crossing.

8 7. Mr. Armando Lopez, a Railroad Coordinator for ADOT, testified in support of the  
9 Application.

10 8. Mr. Lopez testified about ADOT's Application to make improvements at the Agua  
11 Verde Road at-grade crossing near Vail, Arizona, where electric power will be brought to the  
12 crossing so that the Railroad will be able to install automatic flashing LED lights, gates, and bells.  
13 (Tr. 6: 6-16)

14 9. Mr. Lopez further testified that in order to provide power to the automatic warning  
15 devices which will be installed at the crossing, what is termed a "new bungalow" will be constructed  
16 as a home for the facilities used to power the devices. (Tr. 6: 17-22)

17 10. Mr. Lopez testified that 46 trains a day cross the tracks at the Agua Verde crossing at  
18 approximately 25 to 35 miles an hour.<sup>2</sup> (Tr. 7: 8-13)

19 11. According to data from Pima County, ADOT found that approximately 300 vehicles  
20 per day utilize the Agua Verde Road at-grade crossing of the Railroad, but there are no public buses  
21 or emergency vehicles that regularly use the crossing. (Tr. 7: 14-25)

22 12. According to Mr. Lopez, after a fatal accident in July 2005, it was determined that the  
23 crossing needed upgraded safety and warning devices. (Tr. 9: 3-10)

24 13. Mr. Lopez stated that upon the Commission's approval of ADOT's Application  
25 herein, the construction for the upgrade of the crossing will be completed in approximately 12 to 15  
26 months. (Tr. 8: 11-21)

27 14. Mr. Lopez further testified that upon review of the Staff Report, ADOT agrees with

28 <sup>2</sup> According to the Staff Memorandum, trains are authorized for speeds of up to 65 miles per hour in that area.

1 Staff's recommendations for approval of the Application. (Tr. 10: 13-20)

2 15. Mr. Lopez stated that the estimated cost of construction at the crossing will be  
3 approximately \$435,000 with all funds being provided by the FHWA. (Tr. 11: 5-12)

4 16. Mr. Chris Watson, an Assistant Supervisor and Grade-Crossing Inspector for the  
5 Commission, testified that he had prepared the Staff Memorandum which describes the nature of  
6 ADOT's proposed improvements at the Agua Verde Crossing. (Tr. 17: 12-25)

7 17. Mr. Watson testified that in addition to the improvements already described by Mr.  
8 Lopez, the Agua Verde crossing would also have a new concrete crossing surface. (Tr. 19: 17-21)

9 18. Mr. Watson stated that the upgrades to the Agua Verde crossing will result in a safer  
10 crossing and be in the public interest. (Tr. 20: 10-16)

11 19. According to Mr. Watson, after applying the FHWA criteria, construction of a grade  
12 separated crossing at this time or in the future is not warranted. (Tr. 21-22: 23-5)

13 20. According to the Staff Memorandum, the planned upgrade to the Agua Verde crossing  
14 as proposed by ADOT is consistent with similar crossings throughout the state. (Ex. S-1)

15 21. Staff is recommending that the Application be approved.

16 **CONCLUSIONS OF LAW**

17 1. The Commission has jurisdiction over the parties and over the subject matter of the  
18 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
19 40-337.01.

20 2. Notice of the Application was provided in accordance with the law.

21 3. Installation of the crossing upgrade is necessary for the public's convenience and  
22 safety.

23 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as  
24 recommended by Staff.

25 5. After the installation of the improvements at the Agua Verde crossing, the Railroad  
26 should maintain the crossing in accordance with A.A.C. R14-5-104.

27 ...

28 ...

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application, as described herein, is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing upgrade as described in the Application within fifteen months of the effective date of this Decision.

IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in writing, within ten days of both the commencement and completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad shall maintain the crossing in compliance with A.A.C R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

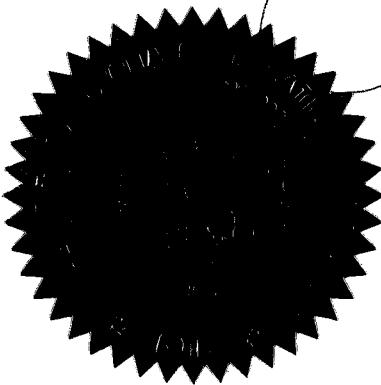
CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER



IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 30th day of July 2012.

ERNEST G. JOHNSON  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MEC:db

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2 DOCKET NO.: RR-03639A-12-0087

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